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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

American Service Corporation
of South Carolina, Appellant,

v.

Bonnie L. Hickle, Respondent.

Appeal from Beaufort County
Thomas Kemmerlin, Jr., Master in Equity

Opinion No. 23936
Heard June 8, 1993 – Filed September 20, 1993
REVERSED

CHANDLER, A.J.: American Service Corporation of South Carolina (American) appeals an Order holding that the Homestead Exemption Act, S. C. Code Ann. § 15-41-30(11) (B) (Supp. 1992)[1] deprives Respondent

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[1] Commonly referred to as the Homestead Exemption Statute, it reads, in part:

> The following real and personal property of a debtor *domiciled in this State* is exempt from attachment, levy, and sale under any mesne or final process issued by any court or bankruptcy proceeding.
> (11) The debtor's right to receive or property that is traceable to:
> (B) a payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent. (Emphasis supplied).

Bonnie Hickle (Hickle), as a non-resident of this State, equal protection of the laws.[2]

We reverse.

FACTS

In September, 1990, American obtained a $32,000 judgment against Hickle, then a South Carolina resident. Subsequent to the judgment, Hickle became a Virginia resident; American has been unable to collect its judgment.

Thereafter, Hickle settled a personal injury lawsuit in South Carolina for $125,000. American seeks to attach proceeds of the settlement in satisfaction of its judgment.

Trial court awarded Hickle the benefit of the exemption, holding that "to allow American to seize the settlement proceeds would be a denial of equal protection."

ISSUE

Does the Homestead Exemption statute, in limiting the exemption for personal injury awards to South Carolina residents only, deprive non-residents of this State equal protection of the laws?

DISCUSSION

"In determining whether a statute violates the equal protection clauses of state and federal constitutions, we must give great deference to the classification passed by

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[2] U. S. Const. art. IV § 2; S. C. Const. art I, § 3.

the legislature, and the classification will be sustained against constitutional attack if it is not plainly arbitrary and there is 'any reasonable hypothesis' to support it." *Smith v. Smith*, 291 S.C. 420, 424, 354 S.E.2d 36, 39 (1987) [citing *Gary Concrete Products, Inc. v. Riley*, 285 S.C. 498, 331 S.E.2d 335 (1985)]. Equal protection is satisfied if: "(1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis." *Samson v. Greenville Hospital System*, 295 S.C. 359, 364, 368 S.E.2d 665, 667 (1988).

Here, the classification of residents versus non-residents satisfies the three-prong test in *Samson*: (1) it is reasonably related to the legislative purpose of protecting South Carolina residents from financial indigency; (2) the members of the classes are treated alike since all residents are entitled to the exemption; and, (3) the classification is reasonably based upon South Carolina's legitimate interest in preventing its citizens from becoming dependent upon the State for support.

The fact that a classification results in some inequity does not render it unconstitutional. *Foster v. S.C.D.H.P.T.*, *306* S.C. *519*, *527*, 413 S.E.2d 31, 36 (1992). A statute enacted pursuant to the legislature's powers is presumptively constitutional. *Nichols v. South Carolina Research Authority*, 290 S.C. 415, 351 S.E.2d 155 (1986).

In the recent case of *Cerny v. Salter*, ___ S.C. ___, 429 S.E.2d 809 (1993), we noted that the rationale for homestead exemptions is "to protect from creditors a certain portion of the debtor's property." [Citing *Elliott v.*

Mackorell, 19 S.C. 238 (1883)]. Moreover, this Court has previously held that a classification between resident and non-resident vendors is rationally related to the legitimate state interest of directing benefits to its citizens. *See Gary Concrete Products, Inc. v. Riley,* 285 S.C. 498, 331 S.E.2d 335 (1985).

We find no equal protection violation. The judgment below is

REVERSED.

HARWELL, C.J., FINNEY and MOORE, JJ., concur. TOAL, A.J., concurring in result in separate opinion.

Toal, A.J. I concur in result with the majority. Under equal protection, the classification must bear a reasonable relation to the legislative purpose. *Gary Concrete Products Inc. v. Riley,* 285 S.C. 498, 506, 331 S.E.2d 335, 340 (1895) (Gregory and Chandler dissenting). The limitation of the exemptions to those domiciled in South Carolina prevents debtors from receiving the benefits of South Carolina exemption statute in addition to the exemptions of their home state. Further, the exemptions provided in the debtor's home state may be inconsistent with those provided for South Carolina residents. Accordingly, I agree that the limitation to South Carolina residents is not plainly arbitrary and, therefore, does not violate equal protection.

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT AMERICAN SERVICE CORPORATION, Plaintiff, v. BONNIE L. HICKLE, Defendant,	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 90-CP-07-917 ORDER [Filed Dec. 7, 1992]

The Plaintiff, American Service Corporation of South Carolina, hereafter "American" obtained a judgment in the amount of $32,512.61 against the Defendant, Bonnie Hickle, hereafter "Hickle", then a resident of South Carolina, on September 7, 1990. The judgment remains unpaid. Since the judgment was obtained against Hickle she has moved and become a citizen and resident of Virginia. American's attempts to collect on the judgment in South Carolina have resulted in a *nulla bona* return.

Hearing that Hickle was in the process of settling a personal injury suit in Beaufort County, South Carolina, American petitioned me for an *ex parte* temporary restraining order directed at the attorneys representing the Defendant in the personal injury suit in which Hickle is the Plaintiff to temporarily prevent them from dispersing the settlement proceeds[1] to Hickle. I granted the

[1] The settlement was in excess of American's judgment, even after one takes out one-third for attorneys fees and adds two years interest to the judgment.

petition and issued the temporary restraining order along with a Rule to Show Cause why it should not be converted into an injunction *pendente lite.*

On the return to the rule I find myself confronted with a Constitutional question. The attorneys representing Hickle have intervened and point to Section 15-41-30 *Code of Laws of South Carolina, 1976,* which reads:

> The following property of a debtor *domiciled in this State* is exempt from . . . levy . . . under . . . any . . . process issued by any court . . . (11) the debtors right to receive or property that is traceable to: . . .
>
> (B) a payment on account of the bodily injury of the debtor . . . [emphasis added]

The attorney representing American points out that Hickle is *not* "domiciled" in South Carolina. And in return the attorneys for Hickle assert the unconstitutionality of the statute. There is a similar statute in Virginia, so if Hickle was being paid in Virginia the funds could not be reached. Only the freak circumstance of having moved from South Carolina between the accident and the settlement subjects the settlement proceeds to seizure by American under the statute. Article IV, Section 2, of the U.S. Constitution provides: "The citizens of each state shall be entitled to all Privileges and Immunities of citizens in the several states." Article 1, Section 3, of the S.C. Constitution similarly provides: "The privileges and immunities of the citizens of this state and of the United States under this Constitution shall not be abridged . . . " These two clauses prohibit states from discriminating against non-residents and are "designed to ensure to a citizen of state A who ventures into state B the same

privileges which the citizens of state B enjoy." *Toomer v. Witsell*, 334 U.S. 385, 684 S.Ct. 1156, 92 L.Ed. 1460 (1948).

The facts in *Toomer v. Witsell, supra,* were that South Carolina required non-residents to pay a fee many times higher than that paid by South Carolina residents for a license to shrimp within the three mile limit. The United States Supreme Court pointed out that although the Privileges and Immunities Clause "does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it . . . [i]t does bar discrimination against Citizens of other states where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of another state."

Thus the problem reduces to: is there any substantial reason for the discrimination here against persons not domiciled in South Carolina? A close look at the South Carolina statute, Section 15-41-30 which exempts from seizure certain properties of South Carolina debtors, reveals the reason why it protects from seizure only the property of South Carolina debtors. Every state has its own homestead exemptions. While they vary somewhat from state to state, they all have as general purpose to give a debtor certain basic exemptions as a nest egg for the future so as to prevent him and his family from becoming so destitute as to join the welfare rolls. The statute lists various categories of exempt property, i.e., $5,000 real property exemption in a residence, $1200 equity in an automobile, $2500 in household goods, $500 in jewelry, $750 in tools of his trade, etc. It makes sense for these exemptions to only apply to local debtors, not to out of state debtors – who, presumably claim similar

amounts in their home states. Without the limitation, a debtor could claim homestead exemptions in a number of states in which he owned property and wind up with a sizeable estate and yet defeat creditors. It is only fair that a Virginia resident who gets his Virginia exemptions of the type outlined above not be allowed to claim similar lists of exemptions in North Carolina, South Carolina, Georgia and Florida and other states where he may have property. He would be double-dipping. As to exemptions of this type there is clearly a substantial reason for the discrimination or apparent discrimination against the non-resident.

But there is under the statute another set of exemptions including an award under a crime victim's reparation law and a payment on account of the bodily injury of the debtor, the one I am here concerned with. Here there is no substantial reason for the discrimination. The Virginia resident is not going to double dip by getting a similar exemption in Virginia; she only gets the same settlement exempted that a South Carolina citizen could get exempted. I therefore conclude that to apply the statute so as to allow American to seize the settlement proceeds would be a denial of equal protection.

In so ruling I do not overlook to case of *Bonebrake v. Morrow*, 183 S.C. 170, 190 S.E. 506 (1937), but as I read that case, it applies to cases of the first category I considered above.

I am not unmindful that my ruling probably deprives American of its only chance it will ever have of collecting a debt honestly owed by Hickle to it. I also am not unaware that when the temporary injunction is dissolved

and the settlement proceeds paid to Hickle it will be too late for American, if I'm wrong. To prevent this and give American a chance to get emergency relief from the Supreme Court if I am wrong, I continue the temporary injunction until December 18, 1992, at 3:00 o'clock p.m. at which time it will cease so that the settlement can be consummated free of the threat of seizure by American.

AND IT IS SO ORDERED.

/s/ Thomas Kemmerlin, Jr.
Thomas Kemmerlin, Jr.,
Master In Equity and
Special Circuit Judge for
Beaufort Common Pleas

Beaufort, South Carolina

December 3, 1992.

The Supreme Court of South Carolina

October 20, 1993

Re: American Service Corporation v. Bonnie L. Hickle

"Motion for rehearing is denied.

s/	David W. Harwell	C.J.
s/	A. Lee Chandler	A.J.
s/	Ernest A. Finney, Jr.	A.J.
s/	Jean H. Toal	A.J.
s/	James E. Moore	A.J.

October 20, 1993."

§ 15-41-30. Property exempt from attachment, levy, and sale.

The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by any court or bankruptcy proceeding:

(1) The debtor's aggregate interest, not to exceed five thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor, except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed ten thousand dollars. If there are multiple owners of such a living unit exempt as a homestead, the value of the exemption of each individual owner may not exceed his fractional portion of ten thousand dollars.

(2) The debtor's interest, not to exceed one thousand two hundred dollars in value, in one motor vehicle.

(3) The debtor's interest, not to exceed two thousand five hundred dollars in aggregate value in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed five hundred dollars in value, in jewelry held primarily

for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in cash and other liquid assets to the extent of a value not exceeding one thousand dollars, except that this exemption is available only to an individual who does not claim a homestead exemption. The term "liquid assets" includes deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.

(6) The debtor's aggregate interest, not to exceed seven hundred fifty dollars in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value four thousand dollars less any amount of property of the estate transferred in the manner specified in Section 542(d) of the Bankruptcy Code of 1978, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive:

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veteran's benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance;

(E) a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless

(i) the plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(ii) the payment is on account of age or length of service; and

(iii) the plan or contract does not qualify under Sections 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

(11) The debtor's right to receive or property that is traceable to:

(A) an award under a crime victim's reparation law;

(B) a payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date

of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.